

Creations made through AI software: the design industry

How is generative design reconciled with the traditional notion of authorship: a "new" role for the designer?

A U T H O R S



Davide L. PETRAZ
Co-Managing Partner



Giorgia COSTA
Attorney-at-Law

In a wide variety of industries, increasingly, those involved in design are familiar with the meaning of "**generative design**".

"Generative design" is defined as that iterative design exploration process that uses **artificial intelligence software** to generate a range of design solutions that meet a set of **preset parameters** (such as materials, production methods, cost constraints etc.).

Among the countless fields in which "generative design" is increasingly being used, one need only mention the **automotive** and **furniture industries**.

Unlike traditional design, in which the process starts from a model that is based on an engineer/designer's knowledge, generative design starts from **constrained parameters** and uses **artificial intelligence** to generate the model.

In fact, computers are no longer just used as passive machines – that is, mere working tools – but on the contrary, they develop, in a very short time, with the help of artificial intelligence algorithms, design ideas with **almost infinite alternatives**. In fact, so-called "generative design" can produce hundreds of design options in a very short time based on predefined parameters set by the user.

The **Italian legal literature** in the field of industrial law and beyond has thus wondered about the new role of designers in this process and raised inevitable **questions** about the **protectability** and **ownership** of such products made through artificial intelligence.

The question regarding the impact of the use of AI software in designs on the profile of **protectability** –that is, the substantive requirements of **novelty** and **individual character** of designs – has **not raised any particular issues**.

On the contrary, however, the profile of the **ownership** of designs and models has raised quite a few questions. Indeed, among the main questions that arise in the doctrine of AI and designs is that of the **attribution of authorship** status and, therefore, the **ownership of the related rights**.

How is generative design reconciled with the traditional notion of authorship? What **role** can be attributed to, for example, **programmers, software houses**, those **involved** in **validating/selecting** designs for production?

Can the owner of the "AI kit" used to generate a given design be considered an "author"? For example, it has recently been argued in doctrine that the **regulation** concerning the designs and models **should be updated with a legislative provision** that, in the case of creations generated independently by an AI system, expressly **assigns this right** (not to the author, but) to the **party that has made the necessary investments**.

The changing role of designers in the creative process, which is increasingly being carried out "autonomously" by intelligent systems, has thus led to inevitable reflections on the topic.

However, the approach that still seems to prevail seems to remain that of **recognizing designers**, whether they intervene in defining upstream parameters or in the final phase of choice and validation, as having a role of "authors".

This "**new**" **role** is well exemplified by the image provided by **Holger Hampf**, the President of Designworks, a BMW subsidiary, according to whom "***the designer is becoming more like a conductor; setting directions and making decisions***".

